NEVADA COUNTY PLANNING COMMISSION
NEVADA COUNTY, CALIFORNIA

MINUTES of the meeting of April 23, 2020, 1:30 p.m., Board Chambers, Eric Rood Administration Center, 950 Maidu Avenue, Nevada City, California

MEMBERS PRESENT Chair Aguilar, Commissioners Coleman-Hunt, Duncan, Johansen

MEMBERS ABSENT:

STAFF PRESENT: Planning Director, Brian Foss; Principal Planner, Tyler Barrington; Deputy County Counsel, Rhetta VanderPloeg; Agricultural Commissioner, Chris de Nijs; Assistant Planner, Amanda Nolan; Associate Planner, Janeane Martin; Senior Planner, Matt Kelley; Administrative Assistant, Shannon Paulus.

PUBLIC HEARINGS:

1. Pfadt Map Amendment Page 2, Line 54
   AAM19-0003; MGT19-0034
2. Mcdermott TPZ Rezone Page 9, Line 436
   PLN20-0016; RZN20-0002
3. Backyard Chickens Ordinance Amendment Page 11, Line 539
   PLN20-0032; ORD20-1
4. Nevada County 2019 Housing Element Annual Progress Report Page 14, Line 678

STANDING ORDERS: Salute to the Flag - Roll Call - Corrections to Agenda.

CALL MEETING TO ORDER: The meeting was called to order at 1:31 p.m. Roll call was taken.

CHANGES TO AGENDA: None

PUBLIC COMMENT: Members of the public shall be allowed to address the Commission on items not appearing on the agenda which are of interest to the public and are within the subject matter jurisdiction of the Planning Commission, provided that no action shall be taken unless otherwise authorized by Subdivision (6) of Section 54954.2 of the Government Code. None.

COMMISSION BUSINESS: None.

CONSENT ITEMS:

1. PLN20-0056; EXT20-0001: Extension of Time for John Barleycorn Investors, LLC and Neal Street Investors Industrial Building Amendment to an Approved Permit (AAP17-0002; DP07-002; U07-004).
Motion to approve Consent items by Commissioner Duncan; second by Commissioner Johansen
Motion carried on a voice vote 4/0.

PUBLIC HEARING:

AAM19-0003; MGT19-0034: PROJECT DESCRIPTION: A request for an Amended Map to amend
the Hidden Glen map recorded in Book 7 of Subdivisions at Page 108 on October 4, 1990 to amend the
location of the riparian area and the open space easement shown on Lot 7 only. In addition the project
includes the consideration of a Biological Management Plan to allow for the encroachment within the
seasonal stream and riparian area setback to allow grading to within 15-feet of the resource. LOCATION:
11637 Jodette Lane at the corner of Jodette Lane and Rattlesnake Road, near the intersection of State
Highway 174. APN: 022-010-026. RECOMMENDED ENVIRONMENTAL DETERMINATION:
Categorical Exempt pursuant to CEQA Guidelines Sections (153061(b)(3) and 15305).
RECOMMENDED PROJECT ACTION: Approval of the Management Plan and Map Amendment.
PLANNER: Amanda Nolan, Assistant Planner

Assistant Planner Amanda Nolan introduced herself and project representative Rob Wood of Millennium
Planning and Engineering to the Commission.

County Counsel Rhetta VanderPloeg stated that there was a delay in receiving comments through
the teleconference interface and suggested that the Commission allow extra time for the publics
comment to be received.

Chair Aguilar stated absolutely. He added that because of the teleconference situation that they
would be flexible with the public comment period.

Commissioner Duncan stated that her screen was displaying an error and she was unable to see the
presentation. She asked if the other Commissioners were able to see the presentation.

Commissioner Coleman-Hunt answered that she was able to see the presentation.

Commissioner Johansen stated he was able to see it.

Chair Aguilar affirmed that he could also see the presentation. He asked if it was possible her
device was not powerful enough. He added that if she had a smartphone, she could view it that
way.

Commissioner Duncan said she would do that. She verified that it was a PowerPoint presentation.

Chair Aguilar said that the Commission could wait while she loaded the program onto her smart
phone.

Commissioner Duncan answered that she was good.

Chair Aguilar asked Planner Nolan to continue.

Planner Nolan began her presentation. She reviewed the location of the property and the
background of the map that was being amended, including the original Mitigated Negative
Declaration. She reviewed characteristics of the map such as the location of the riparian area. She
went over details of the new project which would encroach into the open space easement and
setback to riparian area and noted that the map that was submitted for the Management Plan did
not depict the open space easement and location of Little Wolf Creek as it was shown on the
subdivision map. She stated that during a field survey by Biologist Greg Matuzak that it was
evident that the location of Little Wolf Creek and the associated riparian zone was different than
how it was depicted on the subdivision map. She added that a topographic and boundary survey
was completed by Nelson Engineering to accurately locate the flow line of the seasonal stream and
limits to the riparian zone. She said that the original Mitigated Negative Declaration did identify
potentially significant impacts associated with biological resources, and that mitigation measures
had been included to have development occur outside of environmentally sensitive areas. She
stated that the purpose of the amendment was to map the resource correctly as determined by a
qualified biologist. She reviewed the Conditions of Approval and Land Use Compatibility, and
ended her presentation with Staff Recommendations to find the project categorically exempt
pursuant to CEQA Sections 15061(b)(3) and 15305, find that the original Mitigated Negative
Declaration is adequate pursuant to 15162, approve the Management Plan to allow encroachment
within 15-feet of a resource, and to approve the Map Amendment to allow correction of the riparian
zone to the actual location on the site subject to the Conditions of Approval. She offered to answer
any questions the Commission had.

Chair Aguilar asked for any questions of staff.

Commissioner Coleman-Hunt asked if any public comments had been received on the report.

Planner Nolan answered that no public comments had been received on the report.

Commissioner Coleman-Hunt asked if it had been circulated sufficiently.

Planner Nolan answered yes, the project had been circulated as normal.

Chair Aguilar asked if Commissioner Coleman-Hunt was concerned about the neighbors within
300 feet being notified of the project.

Commissioner Coleman-Hunt answered that she was concerned that no watershed groups had been
consulted and that they were not included in the references made by the biologist. She stated that
Grass Valley had a group specifically for Wolf Creek that knew it very well. She wanted to ask
the applicant if comment had been solicited from them.

Planner Nolan stated that the Initial Distribution of the project was sent to the organization for
Wolf Creek, she verified that they had not provided comment.

Chair Aguilar asked for any further questions.

Commissioner Johansen supported Commissioner Coleman-Hunt, stating he believed it was
important to consider how this would affect Little Wolf Creek.

Commissioner Duncan asked if he was suggesting that the survey and other information provided
was not adequate.

Commissioner Johansen answered that he wasn’t saying that, he said that these were unusual times
and that normally we would have received comment on something that effected Little Wolf Creek.
Commissioner Duncan stated that traditionally staff had a list of concerned parties which they were required to advertise to. She said that staff followed normal procedure and asked if they were suggesting that the groups did not receive the information necessary to consider the project.

Commissioner Johansen said he did not have the answer to that, however he would have liked to have seen something.

Commissioner Duncan clarified that he would have liked to have seen some response from the public.

Commissioner Johansen answered yes, some input.

Commissioner Duncan said maybe Planner Nolan could review who the outreach went to.

Planner Nolan stated that both project submittal for the Management Plan was in October while the Map Amendment was in December and routed as normal. The project had intended to go before the Planning Commission last month, however that hearing was cancelled due to the COVID-19 Pandemic and the associated shutdowns. The project was routed as normal as it was before the shutdowns we are currently experiencing.

Commissioner Duncan clarified that the project was routed before the distraction we are experiencing and was only extended because of the distraction.

Planner Nolan answered that was correct.

Commissioner Duncan asked Commissioner Coleman-Hunt if she was uncomfortable considering the item.

Commissioner Coleman-Hunt answered she was not comfortable considering the item because of the lack of input from the watershed communities. She understood that they did not respond to the standard process. She said she would be more comfortable if she had seen in the applicant’s package that they had been included as a reference, which they were not. She stated that there were things in the report which she did not agree with, and she would have liked to hear from the watershed groups to satisfy her interest. She added that she had significant concern that she did not have adequate information to adequately review the project.

Commissioner Duncan asked Planner Nolan if the watershed groups had been included in the distribution.

Planner Nolan answered yes.

Chair Aguilar asked for further questions, as none were forthcoming, he asked Planner Nolan to introduce the project representative.

Rob Wood with Millennium Planning and Engineering introduced himself to the Commission, stating he was representing Dave and Rachael Pfadt. He clarified that an uplands area existed on a big portion of the applicant’s property which was where they wanted to do a grading plan to park a trailer and boat. They submitted a grading plan as well as a management plan because they knew
they were within 50 feet of Little Wolf Creek. He stated that the biologist mapped the riparian area and determined that they could be within the 50-foot area with proper mitigation as outlined in the management plan. It became clear that the creek had been mapped differently on the original map that was approved in 1990. Nelson Engineering came out and did a survey of the site and found that the creek ran basically parallel with Jodette Lane. They had a biologist come out and verify the location of the riparian area was correct with the new survey, which was how they came up with the new riparian line which differed significantly from the 1990 map. He stated that they were confident that the information was accurate and that the project was routed to the proper agencies which were given time to comment. He said he was happy to answer any questions.

Chair Aguilar asked for any questions.

Commissioner Coleman-Hunt asked if he had directly consulted with any of the watershed groups. She stated that they had done significant mapping of Little Wolf Creek and all its tributaries over the last 30 years. She stated that creeks change their banks and that we were in a period of climate change in which creeks would continue to change. She said that we do have the benefit of local groups that had been monitoring the activity and performance of the creek over many years and she did not see anything in the application which reflected that, nor did she see anything in the application discussing climate change or how these creeks perform in the last few years, particularly in times of significant climate events. She said that the creek could meander back to its original bank and that she did not believe that what was on the map would be permanent either. She said she was uncomfortable with the assessment of the location of the creek today and that more information was not provided regarding the potential for it to meander further. She further stated that she did not believe that Little Wolf Creek was a seasonal creek and wondered if that designation had been picked up by some old literature. She said that the watershed groups had the science and she would have liked them to have been consulted in the process.

Mr. Wood answered that he felt they did everything per the County Zoning Ordinance, they had a professional surveyor accurately locate the location of the centerline of the creek, and they had used a biologist from Nevada County’s approved list. He understood that there could be different definitions of a seasonal creek versus perennial. When they had viewed the site in October no water was flowing in the creek and it was completely dry. He felt that if it was seasonal or perennial was irrelevant because the setback for a perennial stream was 100-feet while for a seasonal creek it was 50-feet. He said regardless of the distance they would have gone through the same process and done a management plan with a professional biologist to properly mitigate for being in that setback. He said that the riparian vegetation was defined to the banks of the creek, and the area which they intended to work in was upland vegetation with no riparian vegetation present as identified in the Management Plans. He believed that he had worked with all the necessary professionals, and that the project was properly routed by the County.

Chair Aguilar said that he knew Little Wolf Creek, he grew up next to it. He said that once you passed Empire Mine by South Auburn Street the creek ran all year. He said that at that point it was picking up a lot of water from the mine, however before that point he wasn’t sure how much water it would have, he could believe it to be seasonal. He asked for any additional questions of the applicant.

Chair Aguilar opened public comment at 2:02 p.m. and asked staff if any comment had been received.
Clerk Paulus answered that at that time we had not received any public comment.

Commissioner Duncan asked that public comment be left open for a moment.

Chair Aguilar answered they could leave public comment open for a minute or so. He added that the project was in his District and he wanted someone other than himself to make the motion.

Commissioner Duncan said that she thought Commissioner Johansen was ready.

Planner Nolan said that the Initial Distribution for the Management Plan went out October 17, 2019 and it had been routed to US Fish and Wildlife, California Fish and Wildlife, California Native Plant Society - Redbud, as well as the Wolf Creek Community Alliance. She added that the Map Amendment was routed January 2, 2020 and went to US Fish and Wildlife, California Fish and Wildlife, California Native Plant Society – Redbud and Wolf Creek Community Alliance.

Chair Aguilar said okay. He asked if any public comment had been made.

Clerk Paulus answered that no comment had been received at that time.

Chair Aguilar closed the public hearing at 2:05 p.m.

Chair Aguilar asked for any additional questions or if the applicant wanted to add anything.

Commissioner Duncan asked Commissioner Coleman-Hunt if she had any further questions after hearing the Initial Distribution list.

Commissioner Coleman-Hunt answered that she was concerned about changing the requirements for development within the setback which was one of the proposed motions. She said she didn’t understand why they would allow a variance or approve that.

Commissioner Duncan said that sometimes they revisited applications to be approved. She asked if Rob Wood would weigh in.

Mr. Wood said that this was a classic example of something that was mapped incorrectly, and that this was an opportunity to correct the map. He said the creek had been that way for the last 25 years, and that the streambed hadn’t changed. He said that this was the County’s process to correct an error, by doing an amended map or certificate of correction. He said this was not uncommon, and when one builds within the 100-foot setback of a riparian area or creek it required mitigation, which involved doing a management plan. He said that they had done everything per the County’s ordinance, this was not uncommon, and that this was the proper process.

Chair Aguilar thanked Mr. Wood and asked for any other questions or comments.

Commissioner Johansen stated that he was not ready to vote on the project today, and that he was not ready to say it was a bad project either.

Chair Aguilar asked for his main concern.

Commissioner Johansen said he would like to see more information.
Chair Aguilar asked what specific information he would like to see.

Commissioner Johansen answered that he had not visited the site because of the COVID lockdown. He felt that he needed to go there and see more of the information that Commissioner Coleman-Hunt was requesting.

Chair Aguilar stated that they had a few options. One being to call for a vote which had the potential to be a 2/2, which would be an automatic denial. The other option was to postpone the project. He asked if the consultant would be oaky with postponing the project and coming back with more information.

Commissioner Duncan stated that postponement was an expensive proposition for the applicants and that this project had been going on for quite a while. She said there was a certain expectation that applications be processed in a reasonable amount of time. She said that if they were going to postpone the project then they needed to provide proper guidance about what additional information the Commission felt was necessary to be able to arrive at a decision. She said she was assuming the additional information they were requesting would not result in a yes or no answer, they just wanted more information.

Commissioner Johansen answered that was correct. He clarified that they were discussing parking pads for an RV and boat.

Chair Aguilar said that was correct.

Commissioner Johansen said it was also an intrusion into the creek.

Chair Aguilar said that the decision he needed to make was if he needed to go out there or if he would believe the report that that creek was mapped in the wrong place. He said that the other option was to take a vote, and if it didn’t pass then the applicant could appeal the decision to the Board of Supervisors.

Commissioner Duncan asked for staff to weigh in.

Planning Director Brian Foss said that this was the process to encroach into a setback of a sensitive resource. He said that the department generally saw a few dozen management plans a year, and that they were generally approved at a staff level. He said that the only reason this one had come before the Planning Commission was because it was associated with an Amended Map. He said that management plans were very frequently handled at staff level, and that it was common practice to rely on the biologist for their expertise if they were on the approved list. He added that they apply mitigation measures to assure that the same practical effect of the setback was being achieved. He said that best practices had been identified in the management plan to insure runoff did not occur and that Little Wolf Creek would be protected from the proposed project. He added that these were not unique or rare, and that staff saw management plans quite frequently. He said that Nevada County had a lot of natural resources, and sometimes they were not mapped correctly or changed. He finished by saying that this was the process to see if some encroachment could occur in a one size fits all setback.
Chair Aguilar said that he understood the process better now. It sounded as though the County depended on professionals to give us the map which the County doesn’t necessarily check. If something is done in error, then we depend on professionals to correct it. He thanked Director Foss and asked for any additional questions.

Commissioner Duncan asked Director Foss what his recommendation would be, considering the choices that Chair Aguilar lined out regarding potential postponement, voting, and the possibility of an appeal.

Commissioner Coleman-Hunt clarified what information she would like to see. She said that a delay had the potential to help her understand the project better, she wanted to hear from the watershed groups and take a look at the project site. She said she was concerned about changing a map of where a creek was located. She said that creeks did change their course over time, and the creek had the potential to change again. She said this had the potential to damage the property owners investment in development. She said that the information of what was going on in the creek was not outlined in the report. She said that we were in an era of climate change and it was important to recognize that what has happened in the creek historically did not necessarily reflect what would happen in the future. She wanted more information from the experts about the watershed performance before she would approve changing a creek on a map.

Chair Aguilar asked Director Foss to answer Commissioner Duncans question.

Director Foss answered that the options would be to table the item to allow for more time and mentioned that a fifth Commissioner would be joining the Commission shortly who would be able to break a tie. He confirmed that a 2/2 vote would result in a denial which the applicant could appeal. He said that the information provided in the Management Plan was the typical level of information the department would receive for a biological report, and that they typically did not discuss climate change or information about where a creek may end up in the next 30 years. He added it was more of a protection of the resource as it was currently. He said if the applicant was willing to wait 30 days then the Commission would have another member which would decrease the likelihood of a split vote.

Commissioner Duncan said that the onus on the Commissioner-to-be would be that they would have to listen to this meeting.

Director Foss answered that was correct, the Commissioner would need to watch the proceedings to participate.

Commissioner Duncan asked if it was staff’s recommendation to move forward with the vote.

Director Foss answered that was staff’s recommendation. He asked Mr. Wood to weigh in on whether the applicant would prefer to go ahead with the potential of an appeal or if they would like to spend some extra time on the project.

Chair Aguilar said that it looked like the applicant would either be denied and then he could appeal to the Board of Supervisors, or they could wait a month.

Mr. Wood answered that if more information was needed in order to affect a positive outcome he would normally agree, however in this instance there was no additional information that could be
They already did everything per the code. He said the applicant had waited 7 months to get to hearing and it has cost them a lot of money for two surveys, a biological management plan, grading plans and mapping. He said if the Commission denied the project then they would appeal it to the Board of Supervisors. He did not feel that any additional information would sway certain commissioners to a more positive vote and reiterated that the applicant used professionals during the process, including a surveyor who accurately located the existing center line of the creek. He said the creek was not going to move, it was very well defined. He wished that the Commissioners would have been able to drive by the site because it was clearly obvious. He said he did not know if the creek was always as it is now, or if it was rerouted when the subdivision was created, but the creek had remained in the same location for the last 25 years. The applicant was only asking to correct the map so he could utilize a portion of his property. He added it was very easy to identify where the riparian area was, and that historically the area was heavily treed which made it more difficult to see. With PG&E doing extensive clearing around their power lines it made it very clear where the creek and riparian vegetation was. He said unless there was specific information that the Commission was requesting, he was inclined to go to a vote and appeal if necessary.

Chair Aguilar said that he viewed this as a minor correction. He said that Nelson Engineering, who worked on the project was very dependable and honest, and that he believed their report. He believed that the hope was to take the project before the watershed group, which he did not feel would provide any additional information to change his mind. He called for a vote and asked for any motions, for or against the project.

**Motion by Commissioner Duncan** to find the project Categorically Exempt from California Environmental Quality Act (CEQA) Guidelines pursuant to §15061(b)(3) and §15305 and that the original Mitigated Negative Declaration (EIS89-120) remains an adequate environmental review for the approval of this project (AAM19-0003), pursuant to §15162. **Second by Chair Aguilar. Motion carried on a roll call vote 3/1 (Commissioner Coleman-Hunt voted no).**

**Motion by Commissioner Duncan** to approve Management Plan (MGT19-0034), provided as Attachment 3 to allow for encroachment within the seasonal stream and riparian area setback to allow grading within 15-feet of the resource, making the following Findings A-B pursuant to LUDC Section L-II 4.3.3.C and Section L-II 4.3.17. **Second by Chair Aguilar. Motion carried on a roll call vote 2/1 (Commissioner Coleman-Hunt voted no. Commissioner Johansen abstained).**

**Motion by Commissioner Duncan** After reviewing and considering the proposed Amended Map application (AAM19-0003), approve the amended map, shown in Attachment 5, subject to the Recording of an Amended Map or Certificate of Correction for Lot 7 as recorded in Book 7 of Subdivisions at Page 108, pursuant to the amended conditions shown in Attachment 1 and making findings A-G. **Second by Chair Aguilar. Motion carried on a roll call vote 3/1. (Commissioner Coleman-Hunt voted no)**

Chair Aguilar noted there was a 10-day appeal period.
Negative Declaration pursuant to Section 15264 of the California Environmental Quality Act (CEQA) Guidelines. **RECOMMENDED PROJECT ACTION:** Recommend that the Board of Supervisors adopt the Ordinance amending Zoning District Map (ZDM) #87 to rezone APN: 065-270-003 from Forest with the Subdivision Limitation Combining District (FR-X) to Timberland Production Zone with the Subdivision Limitation Combining District (TPZ-X), based on the findings contained with the Ordinance.

**PLANNER:** Janeane Martin, Associate Planner

Associate Planner Janeane Martin introduced herself and Applicant Dr. Brent McDermott to the Planning Commission. She discussed the location of the parcel, its current zoning and its potential allowable uses. She said that the applicant was requesting to change the parcels’ zoning designation to Timberland Production Zoning (TPZ). She reviewed the history of the TPZ designation and its purpose. She said that it was a more restrictive zoning than Forest, because it was meant for the growing and harvesting of timber. She discussed the criteria that had to be met in order to consider a property for TPZ zoning, and the applicants’ forest management plan. She explained the incentive for placing a property into the more restrictive zoning was that property would be assessed and taxed at a lower annual rate, which would be balanced by the collection of taxes later from timber harvest sales. She reviewed the classification of the site, and the estimated property taxes should the rezone be approved. She discussed the benefits the County would receive, including maintaining the character of the forest, and maintaining forest health with positive environmental impacts such as air quality, watershed health, and the health of any dependent plant and animal species. She discussed the compatibility of the TPZ zoning district with the General Plan, adding that the rezone was consistent with several goals and policies of the General Plan. She concluded her presentation with Staff’s recommendation that the Planning Commission recommend to the Board of Supervisors that the Board find the project statutorily exempt from CEQA, and that the Board adopt the Ordinance to Amend the Zoning District Map to rezone APN 065-270-003 from FR-X to TPZ-X. She offered to answer any questions.

Chair Aguilar asked for any questions of staff.

Commissioner Johansen asked for clarification that TPZ was more restrictive zoning and asked how difficult the process would be to change the zoning back in the future.

Planner Martin answered that Forest zoning included more potentially allowable uses than TPZ zoning. Both allowed for a single-family home and a second unit, however things like social event facilities, wineries, kennels, and a variety of agritourism activities would not be permitted in TPZ though they could be possible in Forest zoned property. She said this was intended to ensure that the TPZ zone remained for timber production and management.

Commissioner Johansen asked if it was difficult to change it to another zoning from TPZ.

Planner Martin answered that it was a 10-year process. In order to get out of TPZ zoning, a property owner would have to request that they be removed from it and the request would go to a public hearing. If approved by the Board of Supervisors, the taxes would ramp up over the next 10 years until back to the standard amount. If an owner wanted instant removal from TPZ, the Board of Supervisors would have to make a finding of a 4/5 vote, the rezoning would have to be in the public’s interest, and it could not have a substantial unmitigated adverse effect on timber growing and uses of adjacent land.

Commissioner Johansen thanked her for her answer.
Chair Aguilar asked for other questions of staff.

Chair Aguilar asked if it would permissible for an owner to camp on TPZ lands or if it was strictly for harvest.

Planner Martin answered that an owner could still do that, however they did have certain timelines in which a property owner could camp on the property. She asked if that was what he was asking.

Chair Aguilar answered yes, that was what he was asking. He said beyond that the zoning sounded pretty restrictive.

Planner Martin answered yes, it was fairly restrictive. She said the goal would be to eliminate any activities that would necessitate the clearing of trees.

Chair Aguilar asked for other questions of staff and asked if the applicant wanted to add anything.

Planner Martin answered that Dr. McDermott had been listening to the Public Hearing and she was in contact with him via a phone connection. She stated that he responded that he had nothing to add.

Chair Aguilar opened public comment at 2:44 p.m. and asked if any comment had been made so far. He stated that they would leave comment open for a moment.

Chair Aguilar closed the public hearing at 2:45 p.m.

Chair Aguilar asked for further questions or for a motion, adding that the project was in District V.

Commissioner Coleman-Hunt stated that she was very familiar with the property and that she had walked a significant portion of this forest. She said the applicant had done an exceptionally good job of managing the forest and was a good example of how private landowners could manage their forest. She was encouraged to see the applicant come to the Commission with this request.

Chair Aguilar thanked Commissioner Coleman-Hunt for that comment. He asked for any motions.

**Motion by Commissioner Coleman-Hunt** to recommend that the Board of Supervisors find the adoption of timberland preserve zones statutorily exempt from the requirement to prepare an EIR or Negative Declaration pursuant to Section 15264 of the CEQA Guidelines. **Second by Commissioner Johansen. Motion carried on a roll call vote 4/0.**

**Motion by Commissioner Coleman-Hunt** to recommend that the Board of Supervisors adopt the attached Ordinance amending Zoning District Map (ZDM) Number 87 to rezone APN: 065-270-003 from Forest with the Subdivision Limitation Combining District (FR-X) to Timberland Production Zone with the Subdivision Limitation Combining District (TPZ-X), based on the findings contained with the Ordinance (Attachment 1). **Second by Commissioner Johansen. Motion carried on a roll call vote 4/0.**

**PLN20-0032; ORD20-1.** A Public Hearing to consider a recommendation to the Board of Supervisors to adopt an Ordinance (ORD20-1) for text amendments to Section L-II 3.4 of Chapter
II Zoning Regulations and to add Section L-II 3.4.1 to Chapter II Zoning Regulations of the Land
Use and Development Code to allow a limited number of backyard chickens in R1 and RA zoning
districts. The amendments would allow between 4 and 12 backyard chickens in R1 and RA zone
districts depending on parcel size and develop standards for keeping backyard chickens in R1 and
RA zoning. **RECOMMENDED ENVIRONMENTAL DETERMINATION:** CEQA Statutory
Exemption 15061(b)(3). **PLANNER:** Brian Foss, Planning Director

Planning Director Brian Foss introduced himself and Agricultural Commissioner Chris de Nijjs to
the Commission and began his presentation. He stated that during the Board of Supervisors
Workshop in January 2020 direction had been given to Planning and the Agricultural
Commissioner to amend the Ordinance to allow a limited number of chickens to be kept in R1 and
RA zoned properties that were less than half an acre. He reviewed the current County Code
and the proposed changes. The proposed changes to the Ordinance would apply to RA and R1 only
and had a tiered scale for the number of chickens that could be kept. He reviewed the proposed
requirements which contained standards to protect neighborhood compatibility and address any
potential nuisance issues, including prohibiting roosters, guinea hens, and other exotic varieties
that are noisy. This would not allow commercial sale or slaughtering and would require a single-
family dwelling to be on site with a fenced rear yard. A coop that could be secured would also be
required, certain setback requirements would need to be met, feed would need to be stored in an
enclosed container, and manure management would be required. He reviewed the current city
codes allowing chickens and stated that the County was allowing more chickens because
traditionally the County had been more rural with larger parcels. He said that they had worked
with the Agricultural Commissioner and an ad hoc committee, and that the proposed ordinance
change had been circulated for public comment for 30 days between March 1st and March 31st; no
comment was received. He also stated that the project was exempt from CEQA because of the
limited nature of the impacts. He ended his presentation with staff’s recommendation that the
Commission recommend that the Board of Supervisors find the project Categorically Exempt
pursuant to sections 15060 (c)(2), 15061(b)(3), 15308 and 15321 of CEQA and to adopt the
attached Ordinance (ORD20-1), amending Chapter II of the Nevada County Land Use and
Development Code Sections L-II 3.4 and adding L-II 3.4.1. He stated that he and Ag
Commissioner de Nijjs were available for any questions.

Chair Aguilar thanked Director Foss and asked of for any questions of staff.

Commissioner Johansen stated it was great to see this after so many years, and that this had
originally come from the Agricultural Advisory Commission as a recommendation. He asked if
they could increase the number of chickens allowed to.

Director Foss asked if he was specifically asking about the 12 for the 20,000 square foot parcels
or more.

Commissioner Johansen answered yes.

Director Foss said that there wasn’t any particular number that would affect the analysis, however
the further away they got from the number that was noticed and the number that was determined
to be exempt from CEQA opened them up to challenge. He said if it was the pleasure of the
Commission that could be part of the recommendations to the Board.
Ag Commissioner de Nijjs said that the numbers for back yard chickens seen here did come from the Agricultural Advisory Commission. He explained that the numbers proposed were to mitigate any impacts to residential areas and that these chickens were to be for personal use. He said that a good healthy chicken would lay about 250 eggs per year, and that 4 chickens would equate to 1,000 eggs a year. He stated that was an adequate number for a family that ate a lot of eggs. They desired to keep the numbers as such in order to keep them as a personal use and not a commercial use.

Commissioner Johansen stated that under normal times he would agree, however the world forecast for food security was becoming more tenuous. He said that there was a shortage on eggs at this time, and rationing was in place in supermarkets. He felt that the times required more flexibility so people could feel more secure in their food supply.

Chair Aguilar asked what Commissioner Johansen was proposing instead of 4-6-12.

Commissioner Johansen said he didn’t necessarily have a problem with 4 chickens in 6,000 square feet but recommended 8-10 chickens in 12,000 square feet and 14-16 chickens in 20,000 square feet.

Commissioner Duncan stated that the intent was to allow the two zones to legally have chickens in for personal use, not commercial purposes. She said that the limitations did back that up, however as Ag Commissioner de Nijjs pointed out that amount would probably supply the occupants of those parcels. She asked if by adding additional chickens past the number recommended by the Ag Advisory Commission, they ran into any danger of becoming a commercial operation.

Director Foss answered that the based on the calculations outlined by Ag Commissioner de Nijjs, the further away they moved from the amount that was outlined by the Ag Advisory Commission the more questions are raised about commercial versus family use. He also clarified that they were only discussing RA and R1, other rural zonings allowed for significantly more chickens to be kept on site.

Chair Aguilar asked for further questions. He said that he understood what Commissioner Johansen was saying, however he was inclined to go with what had been prepared by the Ag Advisory Commission.

Commissioner Johansen stated that the reason the numbers were low from the Ag Advisory Commission was because they were shy, and they wanted to get something in place. He said that the larger numbers had been discussed at the time and the overall goal was to get something passed six years ago. He added that times have changed since then, and that the demand for food was much higher and much more insecure. He said if he were a neighbor to someone who had chickens that was sharing eggs with the neighborhood, he would love them. He said he was in that situation, with people coming by with more eggs.

Chair Aguilar agreed and said that sharing with neighbors did not fall under commercial applications. He felt that 4-8-14 was adequate and would meet the intent. He asked if the environmental document had been a Negative Declaration.

Director Foss answered that it was an exemption.

Cahir Aguilar asked Commissioner Duncan what her thoughts were on the 4-8-14.
Commissioner Duncan said that she had raised the question for additional information.

Commissioner Johansen said that they needed to remember that not all of those chickens would be adult chickens with everyone laying. He said that out of the 14 you may have 6 that were not laying and 8 that were.

Commissioner Duncan said that one could plan to buy chickens that were already laying or to bring in chicks.

Commissioner Johansen answered that most people brought in chicks. He also mentioned racoons finding their way in.

Chair Aguilar opened public comment at 3:08 p.m. He asked Director Foss if any comments had been received.

Director Foss answered that no comments had been received.

Chair Aguilar asked if the comments came in to the meeting chat or if they were being received by staff.

Clerk Paulus answered that was correct.

Chair Aguilar closed the public hearing at 3:10 p.m.

Chair Aguilar called for a motion. He added that he agreed with Commissioner Johansen regarding the lack of eggs in stores and stated that the 4-8-14 would be okay with him.

Commissioner Johansen asked for the motion to be put on the screen.

Motion by Commissioner Johansen to recommend that the Board of Supervisors find the project categorically exempt pursuant to Sections 15060 (c)(2), 15061(b)(3), 15308 and 15321. Second by Commissioner Coleman-Hunt. Motion carried on a roll call vote 4/0.

Motion by Commissioner Johansen to recommend that the Board of Supervisors adopt the attached Ordinance (ORD20-1) amending Chapter II of the Nevada County Land Use and Development Code Sections L-II 3.4 and adding L-II 3.4.1. as amended at the Public Hearing Second by Commissioner Coleman-Hunt. Motion carried on a roll call vote 4/0.


PROJECT LOCATION: Unincorporated area of Nevada County. RECOMMENDED ENVIRONMENTAL DETERMINATION: Exempt pursuant to Section 15378(b)(5) of the State CEQA Guidelines. RECOMMENDED PROJECT ACTION: Accept the 2019 Housing Element Annual Progress Report. PLANNER: Matt Kelley, Senior Planner
Senior Planner Matt Kelley introduced himself to the Commission and began his presentation. He explained that California State law required that the Housing Element Annual Reports were completed as a public hearing. He explained that because of the COVID-19 Pandemic he had already submitted the document to HCD for review, and he would provide them with minutes of the hearing once it was complete. He reviewed the tables in the report, including building activity, Regional Housing Needs Allocation Progress, the Housing Element Program Implementation progress, and provided examples. He discussed public comment that had been received from the Fire Chiefs Association which was concerned about verbiage on page 112 of the Housing Element itself. He stated that today's project was not an opportunity to amend the Housing Element itself, as that had already been passed. He did state that staff would keep the comment letter in the file for consideration when the Housing Element was updated again in 2027. He ended his presentation with staff recommendations that the Commission accept the annual report and direct staff to submit that report to the State of California Department of Housing and Community Development and the Office of Planning and Research.

Chair Aguilar asked for any questions of staff.

Commissioner Johansen stated that a study he had seen stated that every $1 of development required $1.33 in services. He asked Planner Kelley if he had any current information on that.

Planner Kelley answered he did not.

Commissioner Johansen answered that had been a UC Davis study, and that they also said that for rural areas every $1 in only needed $0.67 in services from the County. He asked where he could find that information.

Chair Aguilar asked if he was talking about the Fire Chiefs letter.

Commissioner Johansen answered yes. He understood that they were not considering that comment today, however he wanted to know for future reference.

Chair Aguilar stated that he did not believe that the meeting had been noticed in a way for that type of discussion, and that they had to be careful. He asked Deputy County Counsel Rhetta VanderPloeg if that was correct.

Deputy County Counsel Rhetta VanderPloeg answered that because the letter had come in late it had been a courtesy to add it to the Commissioners packet to be able to address it. She also noted that the County was statutorily limited on how many times they could change elements of the General Plan. She said that if Commissioner Johansen had a report that he wanted to provide to Planning for the file as future reference for the next update that was advisable.

Commissioner Johansen said he had read that report about 5 years ago and he would look for it.

Chair Aguilar asked for further questions or comments.

Commissioner Coleman-Hunt said that part of the data in the packet had printed very small and she was unable to read it. She asked if there was anything in there she should be aware of.
Planner Kelley answered that she was looking at Table B, and in her packet should have been an enlarged version. He apologized for the way the data printed and explained that it was an HCD excel sheet that he was unable to manipulate, he could only input data. He explained the data that was on that table.

Chair Aguilar asked for further questions.

Chair Aguilar opened public comment at 3:29 p.m. and asked if any public comment had been received.

Clerk Paulus answered that no public comment had been received at that time.

Chair Aguilar didn’t believe that public comment would be received on this item, as it was largely a report to meet the letter of the law. He asked Planner Kelley if that was correct.

Planner Kelley affirmed that was correct.

Chair Aguilar closed the public hearing at 3:30 p.m.

Chair Aguilar asked for a motion on the recommendation.

Principal Planner Tyler Barrington stated that the action was not a recommendation to the Board of Supervisors and directed him to the action on the screen.

**Motion by Commissioner Coleman-Hunt** to, after reviewing and considering the 2019 Housing Element Annual Progress Report, accept the report substantially in the form attached, pursuant to State of California Government Code Section 65400, and direct staff to submit the report to the State of California Department of Housing and Community Development and the Office of Planning and Research as shown in Attachment 1, making finding A. **Second by Chair Aguilar.**

**Motion carried on a roll call vote 4/0.**

Chair Aguilar asked if the item had a 10-day appeal period.

Planner Barrington answered he did not believe it had an appeal period as the report was required to be submitted to the State by April 1. He said that technically the County did submit that report in time. He added that the original meeting had been scheduled before that time, and they had been in contact with the State regarding the change in hearing dates.

Counsel VanderPloeg agreed that there was no appeal period as it was a progress and status report.

Discussion ensued regarding upcoming Commission meetings and ongoing project statuses.

**Motion by Commissioner Duncan; second by Commissioner Johansen to adjourn. Motion carried on voice vote 4/0.**

There being no further business to come before the Commission, the meeting was adjourned at 3:48 p.m. to the next meeting **tentatively** scheduled for May 14, 2020, in the Board of Supervisors Chambers, 950 Maidu Avenue, Nevada City.
Passed and accepted this 28 day of May, 2020.

Brian Foss (by sp)
Brian Foss, Ex-Officio Secretary